THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.16147 OF 2007

ORAL ORDER:

The petitioner, who claims to be working as driver in the A.P. State Road Transport Corporation, filed this writ petition seeking a *mandamus* directing the 1st respondent-Bank not to proceed against him for recovery of the amount outstanding in the loan account of the 3rd respondent.

In the affidavit filed in support of the writ petition, it is stated that both the petitioner and the 3rd respondent are working in the Rajendranagar Bus Depot of the A.P. State Road Transport Corporation. The 3rd respondent has availed a personal loan of Rs.1,20,000/- from the 1st respondent-Bank on 27.4.2005, to which the petitioner stood as guarantor. However, even before the said loan is cleared, the 3rd respondent retired from service on 31.5.2007. The 1st respondent-Bank having failed to recover the loan amount from the 3rd respondent has been proceeding against the petitioner for recovering the amount due. Hence, this writ petition.

It is contended by the petitioner that since the retirement benefits of the 3rd respondent, to the tune of Rs.1,50,000/-, is still available with the 2nd respondent, he had requested the 1st respondent-Bank to take appropriate steps for recovery of the amount due from the 3rd respondent out of the said amount available with the 2nd respondent. However, the 1st respondent failed to do so, but on the other hand taking steps to recover the amount from the petitioner's salary. Though the petitioner got issued a legal notice, the 1st respondent-Bank did not proceed against the 3rd respondent, but trying to recover the outstanding amount of Rs.68,200/- from the petitioner,

which is arbitrary and illegal.

Having heard the learned counsel for the petitioner and having perused the material on record, I do not find any justifiable reason to entertain the writ petition under Article 226 of the Constitution of India. Since, admittedly, the petitioner is a guarantor his liability is joint and several with that of the principal borrower. Even assuming that the petitioner cannot be made liable and that the 1st respondent is acting in breach of the terms and conditions of the loan, the same being a dispute arising out of a concluded contract voluntarily entered into between the parties, cannot be dealt with under Article 226 of the Constitution of India. Obviously, the matter does not involve enforcement of any statutory right and, therefore, it is not open to the petitioner to invoke the writ jurisdiction.

The writ petition is accordingly, dismissed leaving it open to the petitioner to work out the appropriate common law remedy, if so advised. No costs.

(G. ROHINI, J.)

9th August, 2007.
Note:
Issue CC in three days.
(Bo)
Kgr

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.16147 OF 2007

9th August, 2007.

Between:

Mohd Rawoof. .. Petitioner.

And

Mnager, Syndicate Bank,
Bahadurpura Branch,
Hyderabad and others. .. Respondents.